IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No. 182 of 1991
Date of Decision : 22.9.2006

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Amarjit Kaur & others v. Hans Raj & others

CORAM:- HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Ms. Simran Chahal, Advocate,
for the appellants.

Ms. Sonia M.Aggarwal, AAG Punjab
for respondent No.2

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JUDGMENT:

This is an appeal by the claimants who are legal heirs of deceased Gurmeet Singh, against award dated 13.10.1990 passed by the Motor Accident Claims Tribuinal, Gurdaspur, dismissing their claim petition.

In brief, the facts of the case are that on 1.2.1988 at about 4 PM, Gurmeet Singh, a soldier Gunner in Army, was going from village Tibber to his village Ballagon, on his cycle on the left side of the road. At that point of time, a bus bearing registration No.PBN-1106 driven by Hans Raj, respondent No.1,came in a rash and negligent manner and struck against Gurmeet Singh due to which he fell on the ground and the left wheel of the bus passed over his head, resulting into his death at the spot. His cycle also got broken. On an alarm being raised, driver Hans Raj stopped the bus from which Chanan Singh and Abdul Gafoor along with some other passengers alighted. On finding that the police did not register an FIR on the asking of the family of the deceased, Chanan Singh, PW-1,

filed a criminal complaint in Court under Section 304-A IPC against respondent No.1, Hans Raj in which he was summoned accordingly. The legal heirs of Gurmeet Singh, namely, widow, one son, his mother, a sister and two brothers, filed petition before the Motor Accident Claims Tribunal claiming compensation on account of his death.

Upon notice of claim petition, respondents 1 and 2 filed their separate written statement. Respondent No.1, Hans Raj, in his written statement denied if the bus in question was involved in the accident or that Gurmeet Singh died as a result of any such accident. Respondent No.2, namely, Punjab Roadways through its General Manager, in its written statement though admitted the bus in question belonged to the State of Punjab yet denied if the same was involved in any accident.

Parties led evidence in support of their respective contentions.

On appreciation of evidence adduced by the parties, the learned Tribunal vide award dated 13.10.1990 had given findings on all issues and dismissed the claim petition as while deciding issue No.1 it found that deceased Gurmeet Singh did not die due to the accident with the bus in question and that PW-1 and PW-3, Chanan Singh and Abdul Gafoor, were not present at the time of his death. Hence, the present appeal by the claimants.

Learned counsel for the parties have been heard.

The case rests mainly on the statement of PW1 Chanan and PW3 Gafoor. They both were travelling in the bus No. PBN-1106. PW1 Chanan Singh categorically stated that when the bus had reached 1 Km. ahead from village Tibber at about 4.30 p.m., it was driven in a rash and negligent manner by Hansraj, without blowing any horn. In the meantime,

Gurmeet Singh was going from village Tibber towards his village Bullagon on his cycle and was on the left kacha side of the road. The bus struck against him. He fell down on the left side of the road and front wheel of the bus passed through his head. He died at the spot. Hansraj driver stopped the bus. In the meantime Ajit Singh of village Sidhwan also reached on the spot. He, Amrik Singh, Abdul Gafoor and Ajit Singh saw the accident. PW3 Abdul Gafoor has also stated in the similar fashion about the rash and negligent driving of the bus and the accident. He also stated that he asked the bus driver to take the bus to Gurdaspur and carry the dead body, but he did not listen to them and ran away with the bus. The learned Tribunal disbelieved the statement of Chanan Singh and Gafoor mainly on the ground that they did not lodge the first information report. PW1 Chanan Singh admittedly had a hearing in the Court on 5.2.1988 and, as such, it was held that there was no occasion for him to visit on 1.2.1988 especially when admittedly, he stated that he used to come to the Court only on the dates of hearing. PW3 Gafoor was disbelieved that he did not get down from the bus and admittedly there was a B.S.F. Naka nearby but he did not intimate them about the accident. The learned Tribunal has fallen into error in disbelieving the statements of these eye-witnesses. The lodging of the FIR is not a condition precedent before filing a claim petition. It is itself the version of PW1 Chanan Singh that on the next date he alongwith Balkar Singh, the maternal uncle of the deceased went to the police station Sadar, Gurdaspur and the SHO assured that legal action will be taken. However, when no FIR was registered, the same necessitated Chanan Singh to file a criminal complaint on 21.3.1988 wherein admittedly the summoning order has been passed against Hansraj, driver of offending bus No. PBN 1106. Therefore,

merely the fact that the police did not register the case against the driver of the bus itself is not a very relevant so as to conclusively establish that there was no negligence on the part of the driver. PW1 Chanan Singh has categorically stated that on 1.2.1988 he had come to Gurdaspur to contact his lawyer. It is quite natural of him to contact his lawyer few days earlier of the date of hearing, which was fixed on 5.2.1988. PW3. Abdul Gafoor, if had not informed the accident at BSF Naka, it does not lead to conclusion that he was not present at the spot and had not see the accident and was a false witness. PW1 Chanan Singh, though had known to the deceased earlier, but PW3 Abdul Gafoor is an independent witness. They were subjected to cross-examination. They stood firm to their stand in relation to the rash driving of the bus and the accident. No ill-will or enmity has been suggested against the driver nor proved and as such they would be the last persons to implicate him falsely. Their statements are on solemn affirmation. On the contrary Hansraj, the driver, when appeared as RW1 though has denied the accidents, but admits the pendency of criminal complaint against him. Had it been a false case, it was expected of him to make an application about the filing of false complaint, but nothing of this sort shown to have been done, which goes adverse to his said stand. The statement of PW4 Dr. Charanjit Singh, Medical Officer, who conducted the post mortem examination on the dead body of Gurmeet Singh further supports the case of the claimants. The cause of death was crush injury of brain as described, as a result of road side accident. This corroborates the statement of PW1 Chanan Singh when he stated that left front wheel of the bus passed through his head. Thus, there are no reasons to disbelieve the statements of PW1 Chanan Singh and PW3 Abdul Gafoor. Therefore, it

stands concluded that the accident had taken place due to the rash and negligent driving of the bus No.PBN-1106 by Hansraj. The findings of the Tribunal qua this issue are reversed.

So far as the findings of the Tribunal qua issue No.2 with regard to quantum of compensation are concerned, the same are excessive and also needs interference. It is apposite to mention here that the claim petition was dismissed by the Tribunal and for this obvious reason, no cross-appeal had been filed by the respondents. The present appeal is pending since 1991 and it would not be in the interest of justice if the matter is remanded back to the Tribunal for afresh adjudication on the question of compensation.

It is only the bald statement of PW2 Amarjit Kaur that the deceased Gurmeet Singh was employed in Army as Sepoy and getting monthly salary of Rs.1400/- with free ration and free Uniform and that he used to send Rs.1200/- per month for the expenditure. There is no documentary evidence to prove the employment and salary of the deceased. No witness from the concerned quarters has been examined. However, respondents had not disputed the employment and salary as no question had been put to her in cross-examination, in this context. There was only an attempt to rebut that he used to spend the whole salary in wasteful habits. Thus, in this backdrop, keeping in view the expenses on personal keep up and maintenance and giving allowance to the exaggeration, the monthly dependency is assessed at Rs.800/-. The deceased was aged 24/25 years at the time of death as per MLR Ex.PA proved by PW4 Dr. Chandanjit Singh. Thus, the multiplier of 18 would be adequate in view of law laid down by the Hon'ble Supreme Court in Tamil Nadu State Transport Corporation

Limited Vs. S. Rajapriya and others, 2005(2) PLR 650 , instead of 20, so applied by the Tribunal. Rs.3200/- are also assessed on account of expenses incurred on transportation and last rites. Accordingly, by taking the monthly dependency at Rs.800/-, the compensation is worked out which comes to Rs.1,76,000(800 x 12 x 18 + Rs.3200/-).

The Tribunal has rightly held that in presence of mother, brothers and sisters are not entitled for any compensation.

Coming to the rate of interest, previously it used to be 12 %, however, in the recent years the bank rates have been considerably reduced and the rate of interest is being awarded at the rate of 7-1/2% in view of the Rajapriya's case (supra). Therefore, in that backdrop of the situation, the compensation shall carry interest at the rate of 9 % per annum from the date of filing of the claim petition till its payment. The amount of compensation as well as interest thereupon shall be apportioned amongst the petitioner No.1 to 3 as under:-

Petitioner No.1, widow	Rs. 1 lac
Petitioner Nos. 2 and 3 minor son and mother respectively.	Rs.38,000/- each

It is also ordered that the share of minor son be also paid to him cash, if he has attained majority.

In view of the above, the impugned award stands modified in the manner indicated above. The appeal stands disposed of accordingly. No costs.

September 22,2006 **(ARVIND KUMAR)**
Jiten **JUDGE**